The Judicial Role in Public Information

Canadian Judicial Council

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Executive Summary

The Canadian Judicial Council recognizes a responsibility to support federally-appointed judges across Canada in efforts to increase public and media understanding of the role of judges and the operation of the court system.

In the world of the Charter, judges are makers of news and controversy. It is also clear that they are being subjected to far greater public scrutiny and media commentary than in the past.

Many voices from within and beyond the judicial community are now calling on judges themselves to explain their role within the legal system.

Educational Initiatives

Enhancing public understanding of the role of judges and the operation of the court system must begin with education, and must be a long-term project. The CBA, Public Legal Education groups and other organizations are developing curricula and carrying out a wide range of educational programs that could perhaps be supported by the Council, individual Courts and their members. Opportunities may also exist to work directly with law faculties, political science departments and journalism schools to promote courses in the operation of the courts and the role of judges, and to offer judges as resource persons in the classroom.

Public Initiatives

Chief Justices and members of the Courts speak frequently to groups involved in the justice system but less frequently to groups broadly representative of their communities. There are many instances where judges themselves may be the best messengers, and the groups they should reach may prefer to hear directly from judges themselves. Chief Justices and members of their courts may also wish to cooperate with organizations large and small in identifying and arranging forums for judges as speakers, panellists and resource persons.

Judges are encouraged to consider addressing a wide range of subjects in their public, media and educational initiatives. Resource materials can be made available by the Council. A Compendium of Law and Judges, the Internet publication prepared under the leadership of Chief Justice McEachern, explores comprehensively many of the subjects judges can address. The Council office can also circulate excerpts and summaries of speeches by Council members.

Media Relations

The media relations function of courts is another means of enhancing public education about the legal system. The attention paid to media relations by courts varies greatly from jurisdiction to jurisdiction. Contact with the media, whether through interviews, meetings with editorial boards or other media opportunities, is an appropriate mechanism for explaining the role of the courts and judges.

Such contacts can also be an effective way to respond to any erroneous reporting or unfair personal criticism of judges.

Recommendations

The Canadian Judicial Council has approved this document as a framework for the involvement of the judiciary in public legal information. It has also endorsed the following recommendations put forward by its Special Committee on Public Information:

1. That the Council encourage individual courts or jurisdictions to develop and implement local public information plans consistent with the national framework and tailored to the needs and opportunities in their communities.

2. That the Council support the introduction of court-media committees in all jurisdictions, and active media relations roles on behalf of courts.

3. That individual courts adopt approaches for setting the public record straight in appropriate circumstances, along the lines suggested in Annex D.

4. That the Special Committee on Public Information play a continuing role to support implementation of the Council's decisions and that the Council office maintain an inventory of information and tools to assist individual courts and judges.

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1. Introduction

The Canadian Judicial Council recognizes a responsibility to support federally-appointed judges across Canada in efforts to increase public and media understanding of the role of judges and the operation of the court system.

The Council's 1999 Mid-Year Meeting observed that individual courts and the Council itself generally take a reactive stance with the media, which may not result in effective communications with the public. The meeting concluded that the Council should provide guidance and tools to individual courts and judges who wish to take more active roles in public education and information.

The Council decided to appoint a Special Committee on Public Information to consider a comprehensive range of initiatives embracing educational, public and media initiatives. The Committee prepared this paper, which the Council subsequently approved at its September 1999 meeting in Victoria.

> *The paper discusses why judges should address issues of public and media information and education and sets out a framework of potential strategic approaches.*
>
> *Its fundamental recommendation is that individual courts or jurisdictions develop and implement local public information plans consistent with the national framework and tailored to needs and opportunities in their communities.*
>
> *Trial courts and appeal courts may wish to make this a joint undertaking.*
>
> *The Council's communications advisor could be made available initially to help courts formulate their strategies.*

2. Public Understanding of the Courts

"Nowadays there is more newsworthy activity year-round in the courts than in the federal and provincial legislatures taken together" columnist Gordon Gibson has written in *The Globe and Mail.*[1]

In the world of the *Charter,* judges are indeed makers of news, and controversy.

This is inevitable. Judges cannot avoid making decisions that will attract public commentary, and some of that commentary will be negative. This too is inevitable. However, judges can play a role in enhancing public understanding of the courts and thereby help ensure that such commentary is well-informed.

A Compendium of Law and Judges, published on the home page of the British Columbia Superior Courts, says public and media curiosity about the judiciary and its work may be attributed to a number of factors: The *Charter;* a judgment of the Court of Appeal of Ontario

abolishing for most purposes the common law offence of contempt by "scandalizing the court"; the greater public scrutiny of all state institutions, accompanied by growing cynicism and distrust of all things official; the large number of people now directly affected by judicial decisions as litigants, jurors or witnesses; the pervasive influence of American television and other media, and their sensationalization of court proceedings.

The *Compendium* also points out that the media often lack both the time and resources to explain the law, judges and judging.[2]

However, criticism of judges' decisions is not necessarily parallelled by a lack of public esteem for the judiciary. The degree of public confidence in Canada's courts and judiciary is in fact a subject of considerable debate. An Angus Reid poll in October, 1998 on respect for institutions found 83% of respondents had a great deal or fair amount of respect for judges, a shade higher than five years earlier.[3]

Still, Antony Westell, former longtime *Globe and Mail* reporter and Carleton journalism professor, echoes a common refrain when he says all institutions are under attack and the courts are no exception. Neither courts nor other public bodies can rely on automatic respect or deference.[4]

Joseph Fletcher of the University of Toronto and Paul Howe of the Institute for Research on Public Policy recently surveyed Canadian public opinion on the courts and the *Charter*, concluding that there is no general groundswell of opposition to what the courts are doing. Moreover, the *Charter* is regarded favorably by Canadians and a strong majority agree that courts -- not legislatures -- should have the final say in interpreting it.[5]

Peter Russell of the University of Toronto says that judges should not underestimate their level of public support. "I don't agree they are under attack and have to fight back for public approval. They shouldn't pay too much attention to a few politicians and editorial writers. We have done lots of research on this and judges are away ahead of lawyers and politicians."[6]

The judiciary's role in public education should not be seen primarily as a means of responding to criticism. Rather, it should be seen as a means of ensuring that public commentary is based on an accurate understanding of the judiciary's role.

3. A Consensus for Speaking Publicly

The Special Committee's research and consultations have encountered a broad consensus that judges have a responsibility to improve the state of public and media understanding of the courts and the role of judges.

In his recently-published book *Getting Away with Murder: The Canadian Criminal Justice System*, David Paciocco argues that the system is experiencing a credibility crisis largely because

of a lack of public understanding. He says that lawyers and judges have allowed it to become obscenely complex and have not kept the public informed of its real strengths.[7]

Stephen Bindman, former *Southam* justice reporter and currently advisor to the Department of Justice, in a speech reprinted in the New Brunswick Law Journal, said: " . . . judges have an obligation to be more open, upfront, and accessible. The traditional 'monastic view' of the judiciary is simply no longer acceptable given the modern-day, post-*Charter* role of judges."[8]

And while he denies a crisis of confidence in judges, Peter Russell says reasons have always existed for judges to take initiatives in public information and education.[9]

Speaking to a Joint Seminar of the Courts on Gender Issues and the Judiciary in Vancouver October 19, 1991, Justice Minister Kim Campbell said:

> "I tend to the view that the judiciary has a potentially significant role in public legal education in Canada and should be encouraged to fill it. This goes beyond speaking on selected legal topics before audiences of lawyers and judges to seeking a wider audience for comments on and explanations of the judicial system and the apparatus of justice. The information conveyed will be as accurate and full as the judge can make the presentation, and will constitute a major contribution to public understanding of the court system."[10]

In Antony Westell's view, it is necessary for judges to explain -- not defend -- themselves when attacked. Moreover, "there is a lot to criticize in the judicial system".[11]

John Doyle, Chief Justice of South Australia says judges must go beyond conducting themselves in a manner which maintains public confidence. "The judiciary should foster confidence in the courts by doing what it can to ensure that the public understand what the courts do, how they transact their business and why they function as they do." He believes that judges cannot afford to leave largely in the hands of the media the shaping of the public understanding of their work and should have their own public information program, employing means which do not involve the media.[12]

Public outreach by judges has been supported repeatedly in the pages of *Judicature*, published by the American Judicature Society.

> Frances Kahn Zemans, executive vice president of the AJS: "Judges are absolutely dependent on the public's granting them legitimacy as institutional decision makers. And if the public withdraws that, the judicial system will be in very deep trouble. If judges are truly committed to the rule of law and an independent judiciary, it is their obligation to reach out to the public about these important concepts. If judges do not reach out, no one else is going to do it for them..."[13]

> Kevin M. Esterling, AJS research associate: " . . . contrary to traditional view of judicial independence, in contemporary society the ability of courts to act as *independent* decision makers depends on their *involvement* in local communities through various public outreach efforts. . . .
>
> "The traditional view is that institutional legitimacy arises from fairness, independence and due process . . . but this view overlooks the vulnerability of courts to media sensationalism, political attacks, issue-oriented attacks on decisions, all of which can impair citizens' willingness to accept judicial decisions."[14]

Indeed, Canadian judges are encouraged by the *Ethical Principles for Judges* to speak up in support of judicial independence:

> "Neither the judge's personal development nor the public interest is well served if judges are unduly isolated from the communities they serve. . . . judges should, to the extent consistent with their special role, remain closely in touch with the public."[15]
>
> "The public may not get a completely balanced view of the principle of judicial independence from the media which may portray it incorrectly as protecting judges from review of and public debate concerning their actions. Judges, therefore, should take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence, in view of the public's own interest."[16]
>
> "Judges are uniquely placed to make a variety of contributions to the administration of justice. Judges, to the extent that time permits and subject to the limitations imposed by judicial office, may contribute to the administration of justice by, for example, taking part in continuing legal education programs for lawyers and judges and in activities to make the law and the legal process more understandable and accessible to the public."[17]

Similarly, the American Bar Association Model Code of Judicial Conduct and provisions of most states allow judges to teach, write and speak concerning the law, legal profession and administration of justice. The Committee on Codes of Conduct of the U.S. Judicial Conference has advised judges:

> "Such pursuits provide intellectual enrichment for the judge, are an important source of improvement for the justice system and are fully consistent with the public's perception of the appropriate role for judges in our society."[18]

The late Justice John Sopinka did not believe that a Code of Conduct could provide the necessary guidance to judges in deciding on the limits of their public pronouncements. But he was an ardent supporter of speaking out, and delivered landmark speeches on the subject – "Must a Judge be a Monk" in 1989 and "Must a Judge be a Monk - Revisited" in 1995. In the latter address, he said:

> "I happen to believe that accepting speaking engagements is important for the image of the judiciary. Under the *Charter*, we are entrusted with the task of making judgments that were previously the exclusive prerogative of elected representatives. These decisions were made after debate in Parliament or the legislature. No longer can we expect the public to respect decisions in a process that is shrouded in mystery and made by people who have withdrawn from society. The public is demanding to know more about the workings of the courts and about judges."[19]

In his address closing the CBA's 1998 annual conference in St. John's, CBC commentator Rex Murphy argued that the judiciary should be beyond the normal avalanche of criticism that goes on in every other aspect of society. He deplored partisan and cynical attacks on the judiciary. But he added a warning: that if judges and lawyers are to mount a defence, they must recognize:

> " . . . the publicity machine of 20th century communications is not a bridge that you can walk across once and then go back to the other side and pretend it hasn't happened. If the judicial organs of this country decide that they are also going to be part of the tumult of public exchange and hard opinion that goes on in every other domain of society, remember that the decision to enter into it is a fundamental one, and it cannot be retraced."[20]

If judges are to speak publicly, they must do so in a manner consistent with their judicial role and in appropriate force.

4. A Three-Pronged Approach

The Council recommends that courts consider three components for their public information plans:

- Educational initiatives at all levels of the education system.
- Public initiatives – speaking to audiences representative of their communities.
- Reaching public audiences through the media and providing a forum for constructive discussion with the media about the reporting of justice issues.

i) Educational Initiatives

An effective approach to public understanding of the role of judges and the operation of the court system must begin with education, and recognize the issues as long-term.

As stated in Annex B, the *1996 Systems of Civil Justice Task Force Report* noted that "community organizations rated their personal level of information about the civil justice system as 'poor'." In response to Recommendation 26 of the report, the Canadian Bar Association has

lobbied ministries of education to facilitate teaching in the public schools of dispute resolution and the operation of the civil justice system.

Annex B provides a status report on this continuing CBA initiative. It summarizes the finding that few courses on the legal system are available in public schools across Canada, and the CBA's proposal to develop learning outcomes and teaching modules for students in Kindergarten to Grade 12. The CBA recently received a grant from the Law for the Future Fund to pursue a multi-phase project that would see modules produced and disseminated by April 2000. The CBA notes that changing educational outcomes requires coordinating efforts across Canada in 13 jurisdictions. And including the subject as a priority in curricula requires buy-in from many groups, ranging from provincial education department officials to classroom teachers.

A further outcome of the *Civil Justice Task Force Report* was the creation in 1998 of the Canadian Forum on Civil Justice, a joint initiative of the CBA and the Faculty of Law of the University of Alberta. The Forum's purpose is to facilitate the exchange of information and experience on civil justice reform to assist the judiciary, courts, governments and other interested parties. The Forum recently received first-stage funding for a multi-partner study of what is needed to improve the relationship between courts and the public. The organization is preparing a number of other proposals related to civil justice reform.

The Law Courts Education Society of B.C. provides an outstanding model of partners acting to address public education on justice and the law. Annex C summarizes how the provincial government, judiciary, court staff, provincial Bar, teachers and communities have cooperated to introduce court watching, orientation, education sessions with justice system personnel, mock trials, cross cultural workshops, curriculum materials, teacher training and other initiatives.

In Nova Scotia, a Courts Education Committee with representation from all Courts and the Bar as well as the Public Legal Education Society of Nova Scotia has undertaken a series of projects, including a pilot project of speeches by lawyers and judges in high schools. The Committee is currently preparing 13 scripts on the criminal justice system to be aired on cable television and, through cable, into classrooms. The Courts Education Committee supported introduction in 1998 of a 12-week "Media and the Law" course for students at the King's College Journalism School, to be repeated as a credit course in 2000.

The Manitoba Department of Justice has cooperated with the Community Legal Education Association of Manitoba, the federal Department of Justice and Winnipeg schools to produce a "Middle Years Teacher's Kit" on justice system basics aimed at grades five, six and seven.

In Manitoba and Nova Scotia and probably in other provinces, school classes have been invited to attend trials.

The federal Department of Justice has produced a 10-page booklet entitled *Canada's Court System* and a 38-page booklet *Canada's System of Justice*, both aimed at students. But the

department is essentially phasing out of direct, general education activities in favor of core funding for provincial legal education organizations and targeted funding of specific locally-based projects. Its main information activities support government initiatives on a number of hot justice issues. The Strategy for the Renewal of Youth Justice includes measures to provide the public with information on youth crime and the youth justice system, to mobilize experts in the community to provide public information programs and to develop mechanisms to allow public engagement in the administration of the system itself at the local level. The National Strategy on Community Safety and Crime Prevention also includes a public information component. The Community Mobilization Program aims to develop community partnerships and increase public awareness about crime prevention. The strategy also includes the creation of a National Resource Centre that, among other activities, will support information-sharing at the community level and develop a network of community experts and leaders from a variety of sectors to speak publicly about crime and its prevention in communities.

Members of the Council report successful personal experience with initiatives at the post-secondary level. Members of the Manitoba Bar and justices of the Manitoba Court of Queen's Bench speak regularly in public and high schools, and to journalism students and law and ADR courses at post-secondary institutions. In Quebec, real cases have been tried before students at McGill, Laval and the University of Montreal. One-day hearings have covered criminal, matrimonial, commercial and administrative law cases. Students have been provided in advance with impartial summaries of factums. In each case, judgment has been reserved, and sent later to the students.

About a dozen political science departments teach courses on the judiciary, and Prof. Peter Russell has volunteered to identify academics who might cooperate in setting up opportunities for classroom exchanges between students and judges.

The Council believes it would be useful to explore the potential for initiatives at the post-secondary level. It has sent letters to law faculties and political science and journalism departments of universities asking for details on existing courses devoted to the role of courts and the role of judges in the court system.

ii) Public Initiatives

The Special Committee's survey indicated that Council members and members of the Courts deliver a substantial number of public speeches, concentrating on Bar associations, law faculties and groups closely involved in the justice system. Much less often they address more broadly representative groups such as chambers of commerce, service clubs and other community groups.

There are many instances where judges themselves may be the best messengers, and the groups they want to reach, directly or through media, may prefer to hear directly from judges.

At present, many articulate judges are hesitant to speak publicly or to the media. Where there may be a benefit in terms of public education and little risk of entering a political debate, these judges should be encouraged to speak.

Service clubs, any number of community associations, even lobby groups, have been suggested as appropriate and readily available forums, as well as the related communities of police, correctional personnel and law administrators.

Chief Justices and members of their courts may wish to cooperate with organizations large and small in identifying and arranging forums for judges as speakers, panellists and resource persons. Linkages may be set up with organizations such as the provincial Bar associations, the Canadian Judges Conference and the Canadian Association of Provincial Court Judges in order to have wider impact. The CBA's annual Law Day program and a number of other initiatives also offer an opportunity for cooperation in providing appropriate speaking engagements. An incremental approach is necessary.

Messages:

Judges are encouraged to consider addressing a wide range of subjects in their public, media and educational initiatives. They might include:

. The basic elements of democracy, and the separation of powers
. Judicial independence, assuring impartial justice
. The life and work of a judge – challenges, requirement for research and writing
. The method of appointment of judges, including committee recommendations etc
. The profile of judges – typical qualifications; ages, gender splits
. Aspects of judicial independence - *Valente* decision
. Judicial accountability; ethical principles
. Organization and jurisdiction of courts
. Presumption of innocence; admissibility of evidence in criminal law
. Applicable principles of sentencing, bail and parole
. Civil justice reform; access to courts; delays and costs
. Comparison of Canadian and U.S. systems
. The international role played by Canadian judges
. The role of judges vis-a-vis the *Charter*

Many of these subjects are explored comprehensively in B.C.'s *Compendium,* available on the Web at *http://www.courts.gov.bc.ca/legalcompendium.* The Council can assist judges by monitoring and reviewing speeches on these subjects and providing excerpts as models for reference, along the lines of Annex A. Files of these materials can be made available electronically through Judicom or other services.

Individual courts will want to discuss and agree how sensitive subjects should be treated. For example, Chief Justice Lamer and others have encouraged public discussion of *Charter*-related decisions. Chief Justice Lamer has said that lively public debate about the role of the courts is natural and desirable, and criticism of controversial decisions made under the *Charter* is valuable and healthy to our democracy.[21]

The *Charter* is an important and unavoidable subject, but not necessarily in terms of "judicial activism". "Judicial activism has no clear meaning any more -- it tends to mean what the speaker doesn't like."[22] The principal task is to explain and illustrate what interpreting the law means in terms that are understandable. Many eloquent models exist. Annex A provides a sampling.

The Canadian Judicial Council has explicitly declared its support for the conventional view that judges should not "comment" on their judgments. In a news release issued after its September 18, 1998 annual meeting in Yellowknife, the Council said there is a place for responses from the judiciary in the event of unfair personal attacks on judges or serious errors in reporting. But it added:

> "In the case of court decisions, the Council took the position that judgments speak for themselves. The principle of judicial independence and the perception of judicial impartiality are usually best served when judges refrain from commenting on their judgments."[23]

Reasons for this position are expressed well by John Doyle, Chief Justice of South Australia, in his essay *The Well-Tuned Cymbal*. He says there is universal agreement that it is not appropriate for a judge to engage in public discussion about a case the judge is hearing or a judgment given by the judge.

> "A case is to be heard and decided upon the facts and submissions presented to the court. To engage in public discussion is to begin to involve others in the process. It will also cause confusion, because of its tendency to undermine the reasons for judgment as the sole record of the reasons for the outcome. And there is the further problem that in discussing a case a judge is likely to be drawn into matters or aspects of the case which are not part of the judicial decision making process. The appellate process is available to correct error, and that should not be displaced by public debate involving the judge."[24]

Others would qualify this absolute approach in special circumstances. Stephen Bindman argues that a judge can explain or clarify -- although not defend -- a ruling in an informal interview if a relationship of trust has been established with the reporter and the ground rules for the discussion have been agreed upon. [25]

Justice Sopinka argued that the public pressure on judges to speak out publicly is concentrated in two areas -- their work, especially in cases of public importance, and social and political issues in relation to which courts have particular expertise. He said:

> "A judge can and ought to speak on the work of the court. It is absolutely essential that the workings of the court be demystified. Otherwise how can the public have confidence in it? . . . This extends to such things as how the judge does his or her job, how the court functions, the work load etc. With respect to discussion of cases coming before the court, a sharp distinction must be made between cases pending and cases that have been decided. The common law relating to prejudging a case requires that a judge refrain from discussing the issues in a pending case. After a case has been decided, however, I am not in favor of an absolute rule that prevents a judge from explaining his or her decision to the public if failure to do so has led or may lead to confusion or misunderstanding. The extent to which this is done must be left to the taste and good sense of the individual judge. Naturally, discussion of existing law and how the law can be improved should be encouraged."[26]

With respect to social and political issues, Justice Sopinka said:

> "This is the area which is most difficult and sensitive. Obviously, if the issue is likely to come before the court . . . it is taboo to debate the matter in public. There are, however, occasions and subjects in respect of which a judge can legitimately comment notwithstanding that they are of a political nature. I would include matters relating to the administration of justice, the reform of the system of justice, the expenditure of funds to improve the system and the like. The importance of maintaining the independence of the judiciary from the executive and legislative branches dictates that caution be exercised in criticizing the policy of the government. Even here, however, the situation is unclear. . . . public trust in the impartiality of judges should not and cannot be based upon the naive assumption that judges upon appointment abandon their former political beliefs and cease having any interest in political issues, especially in this era of the *Charter,* when the distinction between 'political' and 'legal' issues is becoming at best a rather amorphous one. Rather, public confidence in judicial impartiality must rest upon the assurance that judges are and will be capable of setting aside their personal political views when such views threaten to interfere with their impartiality, or excusing themselves from the particular case."[27]

In similar terms, the *Ethical Principles* state:

> " . . . while restraint is the watchword, there are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice, or the personal integrity of the judge. . ."[28]

Justice Michael Kirby states in the Australian Law Journal:

> "It seems now to be an accepted obligation of chief justices and other senior judges to respond on behalf of their courts to attacks on the courts, their judgments, their personnel or the administration of justice itself."[29]

The examples cited by the *Ethical Principles* are perhaps matters to be addressed by Chief Justices in carefully considered public forums or media initiatives. Clearly, for example, it is open to a Chief Justice to defend a judge in response to unfair personal criticism. Annex D addresses this subject.

Even in those circumstances it would be inappropriate to respond to personal criticism of judges in any way that suggests their judgments should be immune from criticism, that judges cannot be wrong or that criticism, in itself, amounts to "judge-bashing."

The Internet:

The Internet is now reaching into 50% of Canadian households. As courts establish Web sites, the potential will expand for their use to provide information to people of all ages.

This is a priority to be weighed with others in courts' development of their Web sites.

Judicom would appear to be an ideal vehicle for judges to share experience in respect of their communications initiatives; e.g. speech excerpts, best practices.

iii) Media Initiatives

"If we don't help, how can we criticize reporters who get the story wrong?"

The words are those of Justice Claire L'Heureux-Dubé, quoted approvingly by then Associate Chief Justice Pierre Michaud in a speech to the Lord Reading Law Society.[30] He endorsed both the concept of a media officer attached to a court and the responsibility of individual judges to cooperate with the media:

> "In the last few months, I have given several interviews to journalists on a number of subjects. I have made it known to them that I would provide any information they need to perform their duty of informing the public. I return all their calls and ask our judges to do the same. It may be that we cannot comment but, at least, we owe the courtesy of informing them of the reason why we cannot comment."[31]

Asks Joey Thompson, legal affairs columnist and editor of the Vancouver Province:

> "Who do reporters turn to if they have a legal question or they need clarification of a judgment or case? Lawyers won't talk to us for the most part. I have my own contacts, but where are other reporters, especially new ones, to go? I think more accessibility to help explain the system could help offset some negatives."[32]

Ms. Thompson says public credibility and accessibility are directly linked. "The reason you don't have any credibility si that you're not accessible to your clients and you're not, judges in particular, accessible to the public."[33]

Justice Thomas Cromwell has observed that courts and judges should care about their relations with the media for several reasons: Courts depend on public confidence for their authority. To the extent that media shape public attitudes, they are a significant factor influencing the strength of that confidence. When courts deal with media, they are dealing with people who have rights and legitimate interests in reporting to the public how the law works.[34]

Unfortunately, there are few knowledgeable, qualified justice reporters, and no signs that media decision-makers intend to devote more resources to covering the justice system. Most reporters work without adequate education or experience in the law, and without adequate time to research and prepare their reports.

As part of a communications plan prepared for the Council in November, 1994, it was proposed to encourage major news organizations to commit resources to professional training of legal and court reporters. Reflecting on the initiative 2 ½ years later, then communications advisor David Ablett reported no interest in courses or fellowships in the study of journalism and the judiciary. People in important editorial positions who might have been supportive had moved on with the Thomson and Southam ownership changes. "New relationships will have to be built."[35]

The Council will want to consider a number of possible approaches to working with and assisting media in these circumstances, recognizing the limits on what can be accomplished.

Despite the obstacles, courts and media at the local level should have a dialogue about matters of professional concern, a forum to discuss problems and an understanding of one another's roles, responsibilities and limits.

Media relations officers:

The Council has already recognized the value in having an officer in each court assigned to relations with the media. Some 16 individuals fill this function in some degree across Canada.

This is a good time to reflect on the attention courts are paying to media relations. The roles played by media relations officers vary greatly from court to court and jurisdiction to

jurisdiction. For some, media relations is almost a full-time job. Others report that they spend as little as 5% of their time dealing with media. Few play a role explaining judgments or providing advance notice or briefings on upcoming judgments.

In the light of financial constraints and other priorities, it may not be possible or desirable to change or enhance media aspects of existing positions, or to renew pressure on provincial administrations to facilitate funding for new positions. On the other hand, it is clear from the Special Committee's survey that some courts place great value on their media relations officers, and, therefore, these positions are logical centres for future media and public information initiatives.

There is little ongoing communication among these officers. A national meeting would permit them to share experience in dealing with media, access issues and other matters common to their existing roles, and to discuss the implementation of recommendations arising from this initiative of the Council. In a letter to Council members, the Chairman of the Special Committee has asked their support for the attendance of their media officers at the annual meeting of the Association of Canadian Court Administrators, beginning with the meeting in Saskatoon in November 1999.

Court-media committees:

Court-media committees provide a mechanism to deal with things that go wrong, consult about new rules or policies affecting the media, and help ensure that practices do not vary unnecessarily from court to court or judge to judge. They may also provide a forum for discussion of concerns about inaccurate or unfair reports. At the systemic level, it is possible to discuss such matters as how reporters are assigned to courts, how the media decide what is news, and how justice issues are approached by the media.

Such committees now exist in five jurisdictions, and appear to be functioning actively in at least two of the five. In Nova Scotia, the committee has facilitated the introduction of media guidelines, a pilot project of cameras in the Court of Appeal, and ongoing dialogue about media access issues. It has been a particularly useful forum for consultation on policy changes about access and discussion of irritants to both media and the courts. The Alberta committee has changed the procedures for access to judgments and court exhibits and has facilitated regular meetings with management-level media representatives.

Media training:

Media training is useful for judges who speak to the media, whether they are chief justices or designated members of their courts. Professional training helps judges prepare for media encounters of various kinds, anticipate difficult questions and deliver their desired message in typical situations. Many of the same lessons apply in preparing for speeches and question periods.

Since June 1995 the Council has organized four media training sessions for about half of existing Council members. Additional sessions could be arranged to ensure training for other Council members who intend to deal regularly with media in future.

Interviews and editorial boards:

Writing in *Judicature,* AJS researcher associate Kevin Esterling argues that there are sometimes compelling circumstances for judges to grant media interviews. "Judicial isolation can adversely affect even the most responsible reporting."[36]

Chief Justices report that they and the members of their Courts sometimes accept requests for interviews, but it appears that the occasions are rare, and that the initiative always comes from the media. There is no evidence that interviews occur at the request of judges on subjects of their choosing to advance their considered objectives.

Confidence is often the key for the individual judge contemplating an interview. A public information plan can offer confidence to proceed -- authority in the first place, discipline in terms of content and messages, and guidance on the rules of engagement.

Setting the public record straight:

Most courts attempt in one way or another to respond to serious errors of fact by the media. Some have also developed policies and procedures for prompt response to unfair criticism of judges. Annex D presents a synthesis of their experience, recommending when to respond, when not, and how.

Within a comprehensive public information plan, courts could identify appropriate contacts and set up informal networks for cooperation in times when issues have to be managed. Law professors, teachers and lawyers may be in a position to provide facts, context and explanations in situations where it is difficult for judges to deal with media, or where third-party views can be helpful.

Systemic approaches:

For some time the Canadian Journalism Foundation has had an Advisory Committee on Conflict and Justice to provide strategic advice and specific suggestions on justice-related initiatives. In Ontario recently, a bench-bar-media working group sponsored a survey of judicial, government, legal and news media communities on justice system reportage and public communication. Recommendations arising from the survey, now being considered, include a travelling school on justice and media issues for journalists, lawyers, judges and government members; development of other educational information; media access initiatives; and creation of forums or mechanisms for bench-bar-media discussion and dispute resolution.[37]

The Foundation argues that it offers two ingredients essential to the success of a relationship between institutions like the judiciary and media -- neutral sponsorship and the leadership of major players like publishers, television producers and prominent academics on its board of governors.

Critics of the Foundation say that few working journalists are involved, that little has been achieved over the years, and that on justice matters it is the courts that go away from its sessions with the homework. In any event, the Foundation has no continuing source of funds and the Council could expect to be asked for financial support in any joint initiative. The Special Committee will monitor the CJF initiative.

In the early years of the *Charter,* the Canadian Bar Association sponsored a national media-education initiative on *Charter* issues. The Special Committee will consider whether a follow up initiative should be pursued with the CBA.

In the past, judges have looked to the Bar and governments to come to their defence when criticized unfairly. While the CBA adopts no formal role in this respect, past CBA president Barry Gorlick has undertaken an active speaking program in defence of judges, introduced a *Bar Leaders Guide to Judicial Independence*, including talking points, speaking notes and references, and written to media on the importance of judicial independence.

The CBA-Canadian Judges Forum has created an education kit designed particularly for students at the senior level of secondary education. Co-produced by Judge Gerald Seniuk and Judge David Arnot, the kit contains four videos – the primary one entitled *Judicial Independence: What It Means To You* – academic articles, judgments, two resource books, a generic introduction speech, presenter's guide and a lesson plan for teachers.

5. National Strategy, Local Application

Council members and the members of their courts must, of course, weigh the time and resources they can devote to communications against their other commitments and priorities. And as this paper has indicated, there is a practical limit to the improvement in public and media understanding that can be accomplished by judges alone or even in partnership with others.

However, it is clearly in their own interest for judges to participate in public education about the courts. And their actions must be designed and implemented at the local level, responding to local conditions, issues and opportunities.

6. Recommendations

The Council has approved the following recommendations of the Special Committee:

1. That the Council encourage individual courts or jurisdictions to develop and implement local public information plans consistent with the national framework and tailored to the needs and opportunities in their communities.

2. That the Council support the introduction of court-media committees in all jurisdictions, and active media relations roles on behalf of courts.

3. That individual courts adopt approaches for setting the public record straight in appropriate circumstances, along the lines suggested in Annex D.

4. That the Special Committee on Public Information play a continuing role to support implementation of the Council's decisions and that the Council office maintain an inventory of information and tools to assist individual courts and judges.

1. Column in *The Globe and Mail,* June 1, 1999.

2. *A Compendium of Law and Judges,* Preface by Chief Justice McEachern, pp. 1-2, available on the Internet at: http://www.courts.gov.bc.ca/LegalCompendium

3. "The Public's Esteem for Selected Professions," News Release, November 10, 1998

4. Interview, May 7, 1999

5. Joseph Fletcher and Paul Howe to IRPP conference, April 17, 1999

6. Interview, April 21, 1999

7. *Toronto Star,* January 24, 1999

8. *Law Journal*, University of New Brunswick, Vol. 45, 1996, p. 60

9. Interview, April 21, 1999

10. Remarks by Kim Campbell, Minister of Justice and Attorney General of Canada, to a Joint Seminar of the Courts on Gender Issues and the Judiciary, October 19, 1991, p. 14.

11. Interview, May 7, 1999

12. Essay *The Well-Tuned Cymbal*, source and date unavailable

13. *Judicature,* American Judicature Society, Vol. 80, Number 2, Sept-Oct 1996, p. 62-63

14. *Judicature*, Vol 82, Number 3, Nov-Dec 1998 p. 113

15. *Ethical Principles for Judges,* Canadian Judicial Council, November, 1998, p. 15

16. *Ethical Principles,* p. 10

17. *Ethical Principles,* p. 21

18. *Judicature,* Vol. 80, Number 2, Sept-Oct 1996, p. 56

19. "Must a Judge be a Monk - Revisited", speech to the Canadian Association of Provincial Court Judges, Moncton, N.B., September 14, 1995, p. 3

20. "Larry King and the Legal Profession," address by Rex Murphy to the CBA Annual Conference, St. John's, August 26, 1998, pp. 12-13.

21. Speech to the Canadian Bar Association, St. John's, Aug. 23, 1998, p. 4

22. Interview, April 21, 1999

23. *News release,* September 21, 1998

24. *The Well-Tuned Cymbal,* p. 44

25. Interview, August 6, 1999.

26. "Must a Judge be a Monk," speech to the Canadian Bar Association-Ontario, March 3, 1989, pp. 4-5

27. *Ibid,* pp. 5,6

28. *Ethical Principles,* p. 39

29. "Attacks on Judges -- A Universal Phenomenon," Hon. Justice Michael Kirby, *Australian Law Journal,* Vol 72, August, 1998, p. 606

30. "The Media and the Courts," address by Hon. Pierre A. Michaud to Lord Reading Law Society, Montreal, Oct 6, 1994, p. 11

31. Ibid, p. 12

32. Discussion in *Bar Talk,* B.C. Branch, Canadian Bar Association, Vol. II, No. 4, August, 1999, p. 21.

33. Ibid, p. 22.

34. "The Courts and the Media," presentation to CAPCJ Conference, reprinted in Provincial Judges Journal, 1995, p. 22

35. Memorandum to Jeannie Thomas, March, 1997

36. *Judicature,* Vol 82, Number 3, Nov-Dec 1998 p. 115

37. *Proposed Recommendations,* Bench-Bar-Media Communications Working Group, The Canadian Journalism Foundation, May, 1999

Annex A

SAMPLE SPEECH EXCERPTS

Pages

The Role of Judges vis-a-vis the *Charter*.....2-13

Judicial Independence.....14-24

THE ROLE OF JUDGES VIS-A-VIS THE *CHARTER*

The Evolving Role of the Supreme Court of Canada in Constitutional Cases

Rt. Hon. Antonio Lamer, Chief Justice of Canada, to the Rideau Club, Ottawa, February 23, 1998

pp. 2-3

The criticism that one often hears about courts these days, that the courts, rather than elected officials, are going too far, is not new. It is one that judges have simply had to get used to because of their constitutional role. One must remember that the relatively new constitutional role of Canadian courts is not one that the judges themselves sought out, requested, or lobbied for. I know that many of them are actually uncomfortable with it, but it is their sworn duty to uphold the Constitution and that is exactly what they do. What happened in 1982 is that elected officials from the federal government and most of the provinces decided that there should be further limits placed on their own legislative authority. They agreed, as part of the constitutional amendments that accompanied patriation of the Constitution in 1982, to enact a *Charter of Rights and Freedoms* that created a different kind of limit on themselves than previously existed under the 1867 Constitution. In addition to the subject matter limitations that have always existed and that I described a minute ago, they decided to limit their authority to enact laws that affected the rights and freedoms of Canadians. They asked the courts, quite specifically and, presumably, with their eyes wide open, to take on the role of telling them when they had unjustifiably intruded on those rights. They empowered courts to grant remedies when the rights of individuals or groups had been infringed and obliged them to strike down laws that offended the rights and freedoms recognized in the *Charter*.

*The Relationship of the Courts to the Legislative and the Executive Branches of Government in the post-*Charter *Era*

Hon. Madam Justice Beverley McLachlin to a conference of the Institute for Research on Public Policy, Ottawa, April 16, 1999

pp. 13-20

The debate we see every day on the editorial pages of our newspapers about the ambit of our rights and where lines should be drawn between conflicting rights and between the rights of the individual and the interest of the community, can only strengthen our society and our sense of being partners in this Canadian venture. It is the mark of a civil society, of a healthy mature democracy, that such things are debated in the newspapers and on the talk shows of our country, and not swept under the rug or, worse yet, fought out in back alleys and trenches.

The second general way the *Charter* has changed Canadian society -- and this brings me back what I am supposed to be talking about -- is that it has increased the profile of the judicial branch of government. Before we had a *Charter*, judges were marking boundaries between rights, changing the law to reflect settled and emergent conceptions of rights, and occasionally even striking down laws that violated fundamental rights. However, the *Charter*, by putting the people's rights up front and centre, has accelerated the process. It is easier to challenge a law for violation of a fundamental right when you have in your hand a document that specifically proclaims your entitlement to that right. Compared to the task faced by Emily Murphy and her cohorts, for example, it is easier to change a legal interpretation that produces inequality, like the traditional interpretations of the word "persons', when you possess a document that commits the government to equal treatment subject , of course, to such constraints as may be justified in a free and democratic society. Moreover, people's new awareness of their rights has led individuals and interest groups -- and they are to be found on both

sides of virtually every issue -- to come together and mobilize to protect their conception of a particular right. So the *Charter* has increased the challenges to laws on the basis of rights and thus incidentally increased the profile of the courts called upon to resolve these issues.

This brings us to the current debate over whether the formal realignment in powers that the *Charter* has brought about has left too much power in the hands of judges. Depending on how the commentator views the issue, it is put in different terms. Some common variants include: "Judges have used the *Charter* to effect a giant power-grab"; "Unelected judges are running the country"; and simply, "Judges are too activist".

The idea of an overt power grab is easily dismissed. There is no evidence that judges, individually or collectively, particularly wanted *Charter* or that once it arrived, that they decided to use it to entrench their power at the expense of Parliament and the elected legislatures.

Equally easily dismissed is the idea that unelected judges are running the country. True, judges are unelected, and I believe should remain unelected, having considered the conflicts of interest and related problems an elected judge system presents. But that does not mean that they cannot properly act as referees between conflicting rights and interests and interpreters of the *Constitution* and the law. Nor does it mean that they are running the country.

Anyone seriously putting forth such a charge must confront the existence of s. 1 of the *Charter*, which permits the legislatures to trench on guaranteed rights to the extent that such a course can be shown to be justified in a free and democratic society. Should s. 1 fail to confirm a law, s. 33 is also available to permit the elected representatives of the community to override the courts' assessment of what the rights of the individual require.

At this point the proponents of the theory that the judges are running the country shift to pragmatic arguments. It's too hard to

justify infringements under s. 1 or to use s. 33 to override judicial decisions, they argue. There is something in this. It is true that, as a practical matter, it is not easy for legislatures to say to the people, or even a small unpopular sub-group of the people, "Notwithstanding your rights, we are going to violate them". But that, I believe, is as it should be. Individual rights have substance and they should not lightly be cast aside. But the fact remains that, in some circumstances, Parliament and the legislatures can override judicial decisions on the *Charter* if the considered sentiments of the community makes it politically feasible to do so. We must therefore reject the arguments that the judges of Canada have used the *Charter* to effect a power grab and are running the country.

This leaves the charge of judicial activism. Judges, it is said, are too eager to overturn laws, too ready to strike statutes down, too apt to "rewrite" laws enacted by Parliament and the legislatures. I note at the outset that there is not much hard evidence that judges are inappropriately activist, whatever that may mean. A study that was

presented by Professor Monahan of Osgoode Hall Law School only today, based on considerable statistical analysis, concludes that the Supreme Court of Canada, far from being activist, as many have charged, is rather inclined to be judicially conservative and deferential to the elected arms of government.[8] The same study suggests that it is very hard to find instances of the Court "rewriting" laws. Given the absence of any contrary studies of similar depth, this should at least give the critics pause.

Beyond this, it seems to me that if we are to talk sensibly about judicial activism, we must define our terms. Judicial activism means almost as many things to its critics as did the parts of the elephant to the blind men in the old parable.

Some people equate judicial activism with any judicial decision that changes the law. The theory here is that it is the job of judges to

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[8] Patrick J. Monahan, "1998 Constitutional Cases: An Analysis of the 1998 Constitutional Decisions of the Supreme Court of Canada", *Presentation to the Osgoode Hall Law School Professional Development Programme*, April 16, 1999.

apply the law as it is found to exist, never to change or update it. This theory betrays a misapprehension of what judges have always done under both the common law and the civil law of this country. The venerable tradition of developing the law through an accumulation of precedent lies at the heart of our legal system, and is the lifeblood of a socially responsive body of law. New circumstances are brought before the courts. Judges in applying the law, be it a previous case or a provision of the *Charter*, examine the law and the circumstances to see whether the old law should apply or whether it now seems unjust to do so. If a careful analysis reveals that the old law no longer reflects what is considered to be fair and appropriate, it is modified. This involves changing the law. But if changing the law is judicial activism, then judicial activism is neither new nor undesirable.

Ah, the critic says, but judicial activism is not merely changing the law, but changing the law too much. There is some truth in this. Radical changes of the law can be considered "activist" by definition. However, this does not get us any closer to the answer to the question of whether the *Charter* has made judges activist.

The Media and the Courts

Hon. Rosalie Silberman Abella, Justice of the Court of Appeal for Ontario, to the Canadian Club of Toronto/Empire Club of Canada/Canadian Journalism Foundation, Toronto, April 21, 1997

pp. 12-15

One of the labels which is least helpful and the most inappropriately inhibiting, is that the courts, with the *Charter*, are becoming "politicized". The courts are not becoming politicized. They are becoming nothing they have not always been: reviewers and interpreters of the rules to which society, through the legislature, has proclaimed itself subject. The *Charter* is the klieg light that exposed this judicial reality, it was not the instrument of a new judicial norm. The relationship between courts and legislatures in the interpretation of public values has not changed with the *Charter*, only the public's interest has. In the 19th century, for example, the British Prime Minister, Lord Salisbury, felt sufficiently moved to rebuke Lord Halsbury as follows for the House of Lords' routine declawing of social welfare and labour legislation: "The Judicial Salad, he said requires both legal oil and political vinegar, but disastrous effects will follow if due proportion is not observed."

But courts *preventing* rights like those in the era of Lord Halsbury, or in the pre-court-packing plan era of the American Supreme Court, were rarely dismissed as being politicized, even though they were no less activist than later courts which *expanded* them. If it is clearly appropriate for courts to deal with the

interpretation of rights, one wonders why they are deemed to be "politicized" only when they interpret them expansively.

There is no question that lines have to be drawn and care taken, but the sophisticated process of line-drawing does not lend itself to as easy an inquiry as whether a particular issue has a "political" component, since most constitutional issues do and always have had.

The reason legislatures give courts the power to enforce charters of rights is that while both courts and legislatures are entitled to enforce rights, only the courts have the institutional characteristic that best offers the possibility of responsiveness to minority concerns in the face of majoritarion pressures, namely, independence. Only courts have the independence from electoral judgment to risk controversy in enforcing rights. Controversy attracts attention. Attention attracts criticism, and the favourite criticism of courts in the enforcement of rights is the suggestion that they have become "politicized", when in fact all they have done is perform the interpretive duty assigned to them by the legislature.

And here we come to the role of public opinion. Society is horizontal and vertical, and it is practically impossible to know at which point a consensus emerges. Until we know who the public is and how it forms opinions, courts deciding cases are entitled scrupulously to regard public opinion as the responsibility of the legislature and generally as immaterial to judicial determination. In Edith Wharton's *The Age of Innocence,* the van der Luydens and Mrs. Manson Mingott were the custodians and interpreters of social norms in old New York. They were the self-appointed and accepted arbiters of what passed for public opinion at the time. Judges have no such omniscient oracles of prevailing social opinions. Nor should they.

Public opinion, in its splendid indeterminacy, is not evidence. It is a fluctuating, idiosyncratic behemoth, incapable of being cross-examined about the basis for its opinion, susceptible to wild mood swings, and reliably unreliable. Part of the task, in fact, may be to reach a conclusion *despite* the perceived, prevailing public opinions. When we speak of an independent judiciary, we are talking about a judiciary free from precisely this kind of influence. As Lillian Hellman once said: "I will not cut my conscience to fit this year's fashions".

Whatever evidentiary tool the legislatures use to gauge public acceptance, judges use a totally different measurement of relevance because the object of *their* task is totally different. In framing *its* opinions, the public is not expected to weigh all relevant information, or to be impartial, or to be right. The same cannot be said of judges.

But although judges are not accountable to the public in the same way as are elected officials, this does not mean that they are not accountable. While they may not be accountable to public *opinion*, they are nonetheless accountable to the public *interest* for independent decision-making based on discernable principles rooted in integrity. Performing the task properly may mean controversy and criticism. But better to court controversy than to court irrelevance, and better to court criticism than to court injustice.

JUDICIAL INDEPENDENCE

Remarks at the Opening Ceremony of the Commonwealth Magistrates' Conference

Rt. Hon. Brian Dickson, Chief Justice of Canada, September 18, 1988

pp. 4-5

I BELIEVE PROFOUNDLY THAT THE RULE OF LAW LIES AT THE HEART OF THE EFFECTIVE PROTECTION, BOTH DOMESTIC AND WORLDWIDE, OF HUMAN RIGHTS. THE MEANING OF THE RULE OF LAW IS VERY SIMPLE AND WELL-KNOWN TO US ALL. THE LAW MUST STAND SUPREME AS THE SOURCE AND FABRIC OF ALL SOCIAL ORGANIZATIONS. IT IS THE LAW WHICH PROVIDES THE FRAMEWORK FOR RELATIONS AMONG INDIVIDUALS AS WELL AS BETWEEN THE INDIVIDUAL AND THE STATE: THE LAW DELINEATES THE SCOPE OF EACH PERSON'S LIBERTIES AND RESPONSIBILITIES AND DEFINES THE POWERS AND DUTIES OF GOVERNMENT. ALL OBLIGATIONS IMPOSED ON THE INDIVIDUAL AND ALL RESTRICTIONS UPON HIS OR HER LIBERTY MUST BE JUSTIFIED BY LAW. . THIS IS THE MOST FUNDAMENTAL GUARANTEE OF EQUALITY AND FREEDOM WE HAVE ACHIEVED AS A SOCIETY. THE RULE OF LAW ALLOWS US TO LIVE TOGETHER IN FREEDOM AND IN HARMONY. THE RULE OF LAW PROVIDES THE COMMON GROUND FOR SOCIAL PROGRESS AND PROSPERITY.

THE SECOND INSTITUTIONAL PRINCIPLE - AND IT IS A PRINCIPLE RELATED CLOSELY TO THE RULE OF LAW - WHICH IS IMPORTANT IN A HUMAN RIGHTS CONTEXT IS THE INDEPENDENCE OF THE JUDICIARY. THAT PRINCIPLE HAS BEEN A CORNERSTONE OF THE ENGLISH POLITICAL AND LEGAL SYSTEM FOR CENTURIES. THE PRINCIPLE HAS ALSO BEEN FAITHFULLY UPHELD IN CANADA AND VIEWED AS A FUNDAMENTAL CONSTITUTIONAL IMPERATIVE. AN INDEPENDENT JUDICIARY IS ESSENTIAL IN UPHOLDING THE RULE OF LAW AND RESPECT FOR THE RIGHTS AND LIBERTIES OF INDIVIDUALS. IT TOOK MANY YEARS, MANY BATTLES, SOME DEATHS, AND THE COURAGE AND FORTITUDE OF PEOPLE SUCH AS SIR EDWARD COKE TO ESTABLISH FIRMLY IN THE UNITED KINGDOM THAT THE INTERPRETATION AND APPLICATION OF LAWS, AND THUS THE PROTECTION OF THE RULE OF LAW, WAS VESTED IN THE JUDICIARY. FORTUNATELY, IN CANADA, SIMILAR BATTLES WERE NOT NECESSARY. THE FOUNDERS OF OUR COUNTRY ESTABLISHED A SYSTEM OF GOVERNMENT AND OF LAW WHICH RESPECT THE IMPORTANT, BUT DIFFERENT, ROLES OF LEGISLATURES AND THE COURTS.

Two Sides of the Judicial Coin - Independence and Accountability

Rt. Hon. Antonio Lamer, Chief Justice of Canada, University of Victoria, March 12, 1998

pp. 2-7

I. Judicial Independence in Canada

The principle of judicial independence has formed an integral part of Canada's *Constitution* from the country's birth in 1867, even though the *Constitution Act, 1867* did not actually refer to judicial independence in explicit terms. However, part VII of that *Act*, headed "Judicature", provides for both the security of tenure and financial security of federally appointed judges in terms that mirror very closely those used in the *Act of Settlement* of 1701, the legislation by which the British Parliament firmly entrenched the principle of judicial independence in the British Constitution. Section 99 of the *Constitution Act, 1867* stipulates that the judges of the Superior Courts are to hold office during good behaviour and are to be removable only by the Governor General and then only on address of the Senate and House of Commons. Section 100 of that *Act* provides that the "Salaries, Allowances and Pensions" of these judges are to be "fixed and provided" by the Parliament of Canada.

To reinforce these commitments to the principle of judicial independence, the Preamble to the *Constitution Act, 1867* noted the desire of the constituent provinces to have "a constitution similar in principle to that of the United Kingdom". That reference to the constitution of the United Kingdom has been understood to introduce into our own Constitution a number of the principles that had established themselves in the United Kingdom by 1867. These principles include the rule of law, parliamentary supremacy, democratic self-governance, freedom of speech and of the press - and, of course, the independence of the judiciary.

With the entrenchment in 1982 of the *Canadian Charter of Rights and Freedoms*, the principle of judicial independence was given explicit constitutional recognition. According to s. 11(d) of the *Charter*, persons charged with an offence have the right "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal". The concluding phrase of this provision has generated a good deal of litigation over the last several years, one of the results of which has been the development by our courts of a definition or understanding of what is comprised by the term "judicial independence". Three distinct elements of judicial independence have been identified, each of which must be present to the requisite degree before a court will be regarded as constitutionally adequate. The first two of these elements derive directly from sections 99 and 100 of the *Constitution Act, 1867* - security of tenure and financial security. The third element, which concerns the relationship between the judiciary and the other branches of government, has been termed "Institutional Independence". I should also point out, as a Chief Justice, that judges are independent as against their chief justices. I have no authority to tell a judge how he or she should decide a case.

Without digressing too far into the jurisprudence that has evolved in connection with s. 11(d) of the *Charter*, I should point out that an important feature of it is that not all of these three elements must be reflected to precisely the same degree in all courts. Hence, there are "independent and impartial tribunals" in which the judges do not have precisely the same form of security of tenure and financial security as the courts that are governed by sections 99 and 100 of the *Constitution Act, 1867*. In effect, a sliding scale has been created, one that permits courts to pass constitutional muster on the basis of somewhat lesser guarantees of security of tenure, financial security and institutional independence than superior courts must have.

In the course of developing our understanding of judicial independence in Canadian law, the courts have been mindful of the purposes underlying our commitment to that principle. One of those purposes is the maintenance of public confidence in the impartiality of the judiciary. As my former colleague Justice LeDain said in one of the leading authorities in this area, "without that confidence the system cannot command the respect and acceptance that are essential to its effective operation".

Another, perhaps even more fundamental purpose served by judicial independence, is the maintenance of the rule of law. It was, of course, to permit the judges of England to apply the law rationally and evenly that the idea of judicial independence was originally conceived and protected. In the words of John Locke, the purpose of judicial independence was to ensure that the law would not "be varied in particular cases, but [be the same] for rich and poor, for the favourite at court and the countryman at plough".

It is especially important, I think, to bear in mind these reasons for protecting judicial independence when that principle is brought under attack, particularly when it is under attack for what may appear to be good reasons. There is an unfortunate tendency on the part of some to characterize judicial independence as a principle that enures primarily if not exclusively to the benefit of the judges themselves. Of course, one cannot deny that the judiciary benefits from security of tenure and financial security. But it must be emphasized that the primary beneficiary of the principle of judicial independence is society as a whole. The reality is that the rule of law cannot endure over time, if it can exist at all, unless those who have the responsibility of interpreting and applying the law and the Constitution are guaranteed their independence from government. How much confidence could the public really have in their legal system if the judges who interpret and apply the Constitution, who define the legal rights and freedoms of Canadians, were subject to influence on the part of those whom the Constitution binds? The fact of that guarantee of independence must in turn be known to and acknowledged by the citizens if they are to have the confidence to seek recourse in the courts for the adjudication of their disputes, particularly their disputes with government.

Let me now say a word or two about judicial accountability.

II. Judicial Accountability

For at least the last decade or so, the citizens of Canada, like the citizens of many other democracies throughout the world, have subjected governmental institutions to ever increasing scrutiny. This scrutiny relates not only to the substantive decisions made by those bodies. It relates also, and perhaps even more frequently, to the process by which those decisions are taken - in particular, whether that process is consistent with democratic principles. Prominent amongst these principles is accountability - the notion that those who exercise state power must give an account of and answer for the decisions that they take.

This call for increased accountability on the part of the institutions by which Canadians are governed is directed primarily at the legislative and executive branches of government. It is clear, however, that the call for increased accountability is also being directed at the judicial branch.

In responding to this call for greater accountability - and this, I suppose, is the basic thesis of my lecture - I think it is very important, not only for the judiciary, but for all responsible citizens to understand the reasons underlying it, and to scrutinize very carefully the proposals for change that often accompany it. And, for the legal profession and the judiciary in particular, it is important to ensure that these changes do not place at risk the critically important constitutional value of judicial independence.

It would clearly not be possible for me in this short discussion to attempt to identify and examine, either all of the concerns that lie behind the call for greater judicial accountability, or all of the changes that have been proposed to accommodate those concerns. What I would like to do is identify two areas in which these concerns have arisen. I will then examine briefly some of the proposals that have been made to increase judicial accountability in those areas, and comment on how the relationship between judicial accountability and judicial independence plays itself out in them. One of those areas is judicial misconduct. The other is judicial education. However, before I examine the first of these, I would like to spend a few minutes exploring what the notion of accountability means in the context of the judicial branch of government.

The notion that the legislative and executive branches of government should be accountable to the public they serve is one with which we would all, I am sure, quickly agree. We would do so because the notion of accountability here is not only consistent with, but necessary for, a truly democratic system of government. This form of accountability is inherent in the very fact that our governments can be replaced by the electorate from time to time.

However, the notion that the judicial branch of government must likewise be accountable to the public it serves is not, I would hope, as free of controversy, at least if the term accountability is to be understood in the same sense in which it is used in the context of the other branches of government. And I say that for what I hope are obvious reasons. The primary obligation of the judiciary is not to the majority of the electors, but to the law, which

is designed to protect all citizens. The fulfilment of that obligation is integral to the preservation of the rule of law. And to make it possible for the judiciary to fulfil that obligation, we have collectively decided to guarantee it, in the constitution, the substantial degree of independence it currently enjoys - Independence both from government influence and from other sources, including public opinion, outside the courtroom. Therefore, the notion of accountability as we understand it in relation to other branches of government is, in a very fundamental sense, inconsistent with the constitutional role and function of the judiciary.

Does this mean that the notion of accountability has no role to play insofar as the judiciary is concerned? I think not. What it means is that there is sometimes a tension between judicial accountability and judicial independence. One must, therefore, always be attentive in discussions about judicial accountability to the risks that may be posed to judicial independence. In seeking to apply the notion of accountability to the judiciary, one must be very clear about both the kind of judicial conduct to which it is to be applied and the form of accountability that is sought to be imposed.

In an important sense, of course, our judiciary is, and for a long time has been, accountable to the public for the manner in which it performs its most important function - adjudicating the disputes that come before it. That accountability consists in the fact that, with only the rarest of exceptions, court hearings are held in public; reasons must usually be given to support court rulings; both those rulings and those reasons are open to comment and criticism by the public, the media, the profession and the academic community; decisions made by trial courts can be appealed to appellate courts; and the fact that the law as articulated by the courts can be overridden by legislation duly enacted by the elected branches of government.

Ultimate accountability, of course, also exists in the possibility of removing judges from the bench for serious judicial misconduct. In the case of federally appointed judges, this form of accountability is governed by both s. 99 of the *Constitution Act, 1867,* to which I have already referred, and the provisions of the federal *Judges Act*. In the case of provincially appointed judges, it is governed, of course, by the relevant provincial statutes.

Ivan C. Rand Lecture

Hon. C. J. Scott, Chief Justice of Manitoba, to the Faculty of Law, University of New Brunswick, March 14-15, 1996

pp. 1-5

A free and independent judiciary is recognized as one of the essential hallmarks of a democratic society. Only if the third branch of government is free from the two other branches (and I would add in our current society free from undue influence from any source) can we say that we live in a society where the rule of law is able to flourish.

There are three constitutional sources for judicial independence. The first is the preamble to the *Constitution Act, 1867* which states that Canada "desires ... a constitution similar in principle to that of the United Kingdom." The second is Part VII of the *Constitution Act, 1867* itself and, thirdly, section 11(d) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) which guarantees to any person charged with a criminal offence the right "to be presumed innocent until proven guilty according to law ... by an independent and impartial tribunal." This is consistent with the requirements of the rule of law which mandates "impartial and disinterested umpires." (W.R. Lederman, "Judicial Independence and Court Reform in Canada for the 1990's", (1987) 12 Queen's Law Journal 385.)

As Chief Justice Lamer put it in *R. v. Lippe*, [1991] 2 S.C.R. 114 (at p. 139):

> The overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality; judicial independence is but a "means" to an end. If judges could be perceived as "impartial" without judicial "independence", the requirement of independence would be unnecessary. However, judicial independence is critical to the public's perception of impartiality. Independence is the cornerstone, a necessary prerequisite for judicial impartiality.

It is this impartiality which is the true guarantee of judicial independence. Independence provides the conditions for impartiality, and public confidence in this impartiality is what ultimately guarantees judicial independence. As Sir Ninian Stephen put the point:

> What ultimately protects the independence of the judiciary is a community consensus that the independence is a quality worth protecting, the citizen being better served if the judiciary is preserved from domination by those more overtly powerful elements of government, on whose support the judiciary is dependent, yet whose exercise of power the judiciary is charged with keeping within bounds prescribed by law.

(Sir Ninian M. Stephen, "Judicial Independence - A Fragile Bastion", in S. Shetreet and J. Deschênes (eds.) *Judicial Independence: The Contemporary Debate*, (1985) 529-545, at p. 534.)

There are two kinds of judicial independence: institutional and individual. Institutional independence can best be summed up as "judicial control over the administrative decisions that bear directly and immediately on the exercise of the judicial function." (Le Dain J. in *R. v. Valente*, [1985] 2 S.C.R. 673.) See, as well, *R. v. Beauregard*, [1986] 2 S.C.R. 56, and *MacKeighan v. Hickman*, [1989] 2 S.C.R. 796.

Individual independence on the other hand which includes security of tenure and financial security "connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the executive branch of government, that rests on objective conditions or guarantees" (*R. v. Valente*, at p. 685). See, as well, *R. v. Beauregard per* Dickson C.J.C. (at p. 69):

> Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual judges to hear and decide the cases that come before them: no outsider -- be it government, pressure group, individual or even another judge -- should interfere in fact, or attempt to interfere, with the way in which a judge conducts his or her case and makes his or her decision.

It is this aspect of judicial independence and the inevitable (and I say healthy) tension between it and accountability that forms the broad background for this paper. The discipline process must never be permitted to intrude on the decision-making process.

One other introductory point needs to be made. Assessing and dealing with allegations of judicial misconduct is but one area of judicial accountability. To name but a few others, having a respectable and consistent judicial appointments and elevations process is, many

would argue, the very best way to ensure accountability. There is, as Professor Friedland points out, an obvious connection between the quality of appointments and judicial conduct. Continuing judicial education is another example that helps ensure that judges are not only technically competent, but well-suited to perform our task in the social context of current realities.

But most importantly, all judges adjudicate in public and, with the exception of the Supreme Court of Canada, are subject to an appeal process. Accountability for the correctness or validity of our decisions is a key aspect of the judicial system. Our decisions are subject to ongoing review and debate by brother and sister judges, the academic community and the media. Judges cannot decide as they choose. We are bound by rules of procedure, and by precedent. Despite the confidentiality inherent within the judging process itself, few public institutions in our society are subject to such profound public scrutiny in terms of the "quality" of our work as is the Canadian judiciary.

Public Legal Education Project
Canadian Bar Association

The 1996 Systems of Civil Justice Task Force Report concluded that the Canadian public has a need to be informed about the civil justice system, and has a further obligation to understand their options and to attempt informal dispute resolution methods. In the report it was noted that "*community organizations rated their personal level of information about the civil justice system as 'poor'.*(Page 53). The most conspicuous method of bringing about this understanding is through the education system, at both the elementary and secondary school levels.

The *Public Legal Education: Conflict Resolution and the Canadian Justice System Project* will develop education outcomes and teaching modules to assist elementary and secondary schools in providing education on dispute resolution skills and the operation of the justice system. These teaching modules, which will be developed in consultation with educators, governments and members of the legal community will attempt to bridge the gap in understanding that is a barrier to access to justice for many Canadians.

The resulting program will be made available to all levels of school administration including: provincial and/or territorial curriculum development committees; legal education societies; professional development programs for teachers; teacher federations; and the Council of Ministers of Education, Canada. The program will be flexible in that it can be used either in the development of detailed curricula, or as an additional resource for classrooms to use on an ad hoc basis. In addition, the program will provide teachers with access to interested volunteers to help with classroom presentations if requested.

Definition of the Problem

Recommendation 26[1] of the Systems of Civil Justice Task Force Report called on the CBA to enter into discussions with provincial and territorial ministries of education to facilitate teaching in the public schools of dispute resolution and the operation of the civil justice system. In 1997, President Russell Lusk (1996-1997) wrote to the ministers of education and received their written support for this initiative. President P. André Gervais (1997-1998) subsequently visited the ministers of education (or their deputies) of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and P.E.I. to solicit their support. A similar message was provided to provincial justice ministers, and chief justices were informed of the initiative.

The response to our consultations were overwhelmingly positive. For example, in Manitoba, education officials involved a CBA representative in a committee developing legal education outcomes for social studies being developed as part of the western provinces protocol. If adopted, this could influence learning outcomes for English-language social studies courses in all jurisdictions west of Manitoba. In Nova Scotia, the CBA had an opportunity to comment on the validation draft of the Foundation for Atlantic Canada Social Studies Curriculum. Again, if CBA views are adopted, these outcomes would be sent to the education ministers in the four Atlantic provinces.

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1 Recommendation #26 states: The Task Force recommends that
(a) the CBA enter into discussions with provincial and territorial ministries of education or their equivalents to facilitate the teaching of dispute resolution skills and the operation of the civil justice system in Canadian elementary and secondary schools; and
(b) these efforts be undertaken in consultation with law societies, law schools, members of the judiciary, and governments.

These outcomes, however, are only a first step. They must be followed up with detailed teaching modules, developed for each grade level in an easy to understand format. The development of draft model curricula on dispute resolution and the legal system would provide education officials with a ready-made program, which could be tailored if necessary to meet the regional needs of Canada's thirteen jurisdictions.

Only a very few courses on the legal system and alternative dispute resolution are available in the public school system. In the few jurisdictions with such courses, they are offered on an optional basis. Some jurisdictions include courses on legal subjects under citizenship, others under social studies. Given the lack of mandatory courses on the legal system, it is not surprising that few Canadians understand the workings of the justice system. Canadians have an obligation to understand dispute resolution and the workings of the justice system, but they are not being provided with access to the necessary information to meet this obligation.

Rationale

It is clear from our consultations that the operation of the justice system is largely overlooked in Canadian school curricula. In order to close this gap, we propose to develop learning outcomes and teaching modules for students in Kindergarten to Grade 12 that include a knowledge of the workings of the civil and criminal justice systems as well as the principles of dispute resolution. Although specific courses on dispute resolution are being taught more often in early grades, it is clear more can be done, especially given the growing problem of violence in schools.

Unlike most national CBA lobbying activities, changing educational outcomes requires co-ordinating efforts across Canada in thirteen jurisdictions. Learning outcomes are reviewed only periodically, in most cases on a rotational basis. However, these learning outcomes , which are set by protocol, provide only a minimum which cannot be reduced. Outcomes and courses can be added to by individual jurisdictions if necessary. We believe this is a priority.

Inclusion of this priority requires buy-in from many groups – ranging from provincial education department officials to classroom teachers. Once adopted, successful implementation will require teachers who are comfortable with course delivery. The CBA has offered to provide teachers with access to interested volunteers to help with classroom presentations if requested.

The curricula initiative is essential to the Task Force goal of improving public access to the legal system.

Methodology

To date, the CBA has been able to developed the following general outcomes:

> *The CBA recommended that the outcomes under the curriculum component entitled Citizenship, Power and Governance be modified as follows:*
>
> > *By the end of grade 3, students will be expected to:*
> >
> > - *recognize the need for criminal and civil courts in our society;*
> > - *demonstrate basic understanding of the importance of dispute resolution.*
>
> *By the end of grade 12, students will have achieved the outcomes for entry-grade 9 and will*

also be expected to:

- *apply their knowledge of the Canadian civil and criminal justice systems and alternative dispute resolution.*

Phase I: Initial Outreach

Two curriculum experts will be identified to act as advisors on the project. Contact will be made with all provincial education department officials, local school boards, and classroom teachers who will be invited to participate in the development of this project. In addition, lawyers will be sought out at the local levels, to participate in the project, especially with respect to being available for classroom presentations.

Phase II: Development of Outcomes

Detailed outcomes for each of the primary and secondary grade levels will be developed. This will require research and consultation with teachers, teacher federations, the Council of Ministers of Education, law societies, law schools, members of the judiciary, and governments. Care must be taken to establish the appropriate level of understanding (outcome) for each primary and secondary grade level.

Phase III: Development of Teaching Modules

Once the outcomes for each grade level have been determined, corresponding teaching modules will be developed. This will include the drafting, circulation for consultation, and revision of the curricula once comments have been received.

Phase IV: Dissemination

The final material will be made available to all stakeholders and will include: the general outcomes, detailed teaching modules, and a list of local resource people who are able to participate when called upon. The final material will also appear on the CBA home page.

Anticipated Impact and Target Group

The anticipated impact of this initiative is far-reaching. Through this initiative, we have the potential to provide a better understanding of dispute resolution and the legal system to all Canadian children.

Annex C

Law Courts Education Society of British Columbia

Provincial Office: 221-800 Smithe Street, Vancouver, British Columbia V6Z 2E1
Telephone: (604) 660-9870 Fax: (604) 775-3476 Email: rick.craig@ag.gov.bc.ca
President Emeritus: Martin R. Taylor, Q.C.

Background:

The Law Courts Education Society was created in response to government action on the Access to Justice Report of 1988. It took over the courts related public legal education programming which had started in 1979 with the opening of the Vancouver Law Courts complex. The programming it currently delivers to schools has been built up over 19 years.

The Society's Board of Directors represents a partnership between major stakeholders in the justice system. The Society has an appointed Board of Directors composed of one Judge from each of the Appeal, Supreme and Provincial Courts (the first two appointed by the Chief Justice and the latter appointed by the Chief Judge of Provincial Court.) Three representatives of the Ministry of the Attorney General are appointed by the Attorney General. Currently, they represent the Criminal Justice Branch, Policy and Legal Branch and Court Services Branch of the Ministry. The B.C. Branch of the Canadian Bar Association appoints one representative who is usually a member of their Executive Committee. These seven Directors appoint three community Directors: one representing the interests of First Nations' community, another for immigrant and visible minority communities and the third representing schools and other educational institutions. In September, this partnership will be expanded to include a representative of the Ministry of Education appointed by the Minister of Education. This change formalizes the long standing working relationship between the Society and the B.C. school system.

Budget: The Society receives core funding from the Ministry of Attorney General ($300,000), and more recently, the Ministry of Education ($150,000). The Law Foundation core funds part of the Northern Native PLEI program of the Society ($55,250). In addition, the Society raises another $60,000 yearly from fees on projects and fundraising. The Society also operates several special programs which have separate budgets from other sources and undertakes numerous special projects funded by a variety of sources.

Programming:

The Society is the only public legal education organization working systematically to develop curricula, training services and courtwatching for B.C. schools. It works in a systematic and sustained manner with **First Nations communities and schools in all parts of the north, interior and lower mainland**. In some of the remote schools in the north where the Society is working the school drop out rate is 100% after grade seven. Society First Nations curriculum materials for kindergarten to grade seven, which are culturally sensitive and international award

winning, are being received enthusiastically by band school and public school teachers and by First Nations communities throughout the province. Recently the Society organized 62 professional development workshops involving over 600 teachers on this curriculum.

The Society publishes and maintains **curricula resources** for primary, intermediate, secondary and post secondary levels of education. Resources are also available to people studying English as a Second Language. The Society currently distributes over 25 mock trials, for example, and mock trial gowns costumes for many regular trial cases, as well as fairytale and First Nations' mock trials.

Other important Society educational initiatives include partnering with School Districts in the lower mainland to deliver **specialized educational programs (Courtlink Youth Programs) on our justice system for newcomer youth and youth at risk.** This partnership model of education involves the justice system and schools working together on effective, sustainable, and low-cost educational programs annually. Program goals focus on orientation and adaptation for newcomers, and attitude and behaviour change for youth at risk.

The Society is partnering with the Department of Justice and several school districts on important **legal education research** on the impacts of legal educational programming on the attitudes and behaviours of youth. This is complex research requiring several years and community partnerships with the Nisga'a, Alert Bay and Sto:lo nations and the three school districts involved.

The Society also works with the justice system and community agencies on special needs programming. Some examples of this work include:

- educational materials for service agencies and others dealing with the special legal educational needs of the **mentally challenged** in the area of criminal law. This is an area where no legal education resources existed prior to our efforts. The Society is currently training service providers on the use of these educational materials. The Society is currently developing a civil law component to this program as well as a CD Rom of legalpixs for justice system personnel;

- a partnership with the **Deaf community** on the development of an ASL video, user guide and teachers' guide on the justice system for the Deaf and the development and delivery of community workshops in ASL on criminal law, civil law and the court system.;

- the delivery of **Parenting after Separation** workshops in 4 lower mainland communities. The development and delivery of specialized Parenting after Separation programs for the Chinese and South Asian communities. The development of specialized resources such as a Parenting after Separation handbook;

- **The Court Information program for Immigrants** which provides information, assistance, referrals in five languages (Cantonese, Spanish, Vietnamese, Hindi and Punjabi) for immigrants and refugees appearing in court as the accused, victims, witnesses or parties involved in a civil suit;

- The development of a specialized **Auto-crime courtlink** for schools throughout the Province of B.C. These courtlinks are of two types: for intermediate youth and for youth at risk;

- The organization of **Judicial Community Liaison Programs** whereby interested Judges can visit communities and discuss justice issues. Previous programs have been with the South Asian, Vietnamese, Chinese and Hispanic communities. The next program is with the Downtown Eastside community which is the poorest area of Vancouver;

- The ongoing development and publication of information materials on the justice system in many languages. Currently, materials are available in ten languages;

- The Society has won five **achievement awards** in the last ten years – three of which are international from the National Association for Court Management (2X) and the Association of Family and Conciliation Courts.

SOCIETY HIGHLIGHTS
April 1, 1998 - March 31, 1999
Summary report

The Society set a goal of increasing service delivery from the level of 25,000 British Columbians to over 30,000 British Columbians during this year. Despite ongoing budget uncertainty, this goal was surpassed and the Society provided direct services to over 35,000 people. As in recent years, many staff experienced a lay-off period during the summer, ranging from 2 to 8 weeks. Despite these limitations, the Society has taken steps to strengthen regional program delivery and continues to produce and implement high quality resource materials and training programs. It has also consolidated recent initiatives such as the Parenting after Separation program and a provincial fundraising program.

*NB - Brackets indicate figures for previous year (97/98) programming.

1) **Regional Office Programming:** the Society operated 5 regions, a provincial office, an immigrant information program office and a Parenting after Separation program during the year. During the time, regional staff:

a) provided core services to 30,545 participants (22,198) in 4,926 (4,074) activity sessions

b) handled 1,346 (946) groups

c) included over 2,556 volunteers directly in Society programming

c) provided 1155 (809) orientations on the court system

d) organized 1130 (813) courtwatching sessions

e) organized 606 (398) Judge's sessions

f) arranged 566 (346) system personnel sessions

g) conducted 889 (642) sum up sessions

h) organized 375 (213) Mock Trial sessions

i) delivered 219 (92) outreach sessions to schools, native and other communities

j) organized 1040 (585) program development sessions in communities throughout the province

k) conducted 671 (660) program maintenance sessions with court staff and community groups throughout BC

l) organized or participated in 132 (163) protocol sessions for visiting dignitaries and at the community level.

m) serviced 3,658 (3,197) information requests .

n) handled 33,428 (18,730) distributions of material to the public .

o) were involved in April in organizing 4 Law Day Open Houses in the North, Interior and Lower Mainland West and East (4)

p) organized 2 job shadowing placements (12) and 18 careers workshops involving 542 participants

r) organized 26 (15) Courtlinks for native, youth at risk and multicultural communities involving 542 youth (345) in 55 days (38) of activities and 171 activities .

s) organized 46 (28) professional development sessions involving 51 teachers

t) organized 0 (4) diversity awareness workshops involving justice system staff

u) organized 365 (163) specialized tour/protocol sessions (178)

2) <u>Provincial Office Programming:</u> Provincial Staff have been involved in the delivery of some direct services, ongoing Society administration and the development and implementation of both core and special projects. Provincial Staff were involved in:

- the consolidation of a diversified **funding strategy** for the Society including a provincial fundraising campaign ($24,533), an increase in curriculum material; fees, a Law Society campaign follow up and additional Government financial support;
- the maintenance of the Society **curriculum/leaflet resources** sales, ($17,385), distribution and storage, **presentations** at the Public Legal Education Association of Canada conference in Prince Edward Island, the Washington State Access to Justice Committee meetings in Seattle and Chelan (300 people), Corrections Branch Management Committee, Legal Services Branch Management Committee, Criminal

Justice Branch Management Committee, Public Safety Branch Management Committee, Annual Law Foundation Conference for Grantees on Managing with Limited Resources, Social Studies Teachers Conference;

- organizing special events and workshops including cultural diversity workshops for the Justices of the Peace, the special launch ceremony of the ASL video for the Deaf Community (350 people), Human Rights in South Africa, Human Rights in Pakistan, Protocol Activities for Minister Omar and Human Rights Commissioner Dr. Pityana; five public youth forums for the AG's provincial tour, including Kelowna, Kamloops, Penticton, Abbotsford and Chilliwack; and three youth and community activities for Multiculturalism Week.
- participation as a member of the PLEAC National Board (6X) , Inter-Ministry Committee on Multiculturalism (1X), Law Related Education Committee (3X), AMSSA (3X), Law Foundation Funded Agencies Meetings (2X);
- protocol activities for dignitaries (mostly Judges) from the Commonwealth Conference, China, Taiwan, the United States, Australia, Great Britain, and Canada: and
- distributions of over 20,000 copies of Society , ESL and cultural programs materials .

The Society has been involved in many projects at the Provincial level. Some of these projects are ongoing and will be completed during 1999/2000.

Core Educational Materials

- 1998/99 Annual General report
- 1999 Publications Catalogue Update
- Society protocol Kit – updated
- Courts of B.C. leaflet reprint
- Legal Pix Cards
- Korean Leaflet reprint
- Courtlink Youth Binders (ESL/Secondary editions)
- Parenting After Fact/resource Sheets (4)

Special Projects

Completed

- First Nations Journeys of Justice Research – Year 2
- Court Interpreter's Handbook
- Judicial Community Liaison Workshops (3)
- Labatt's Summer Student program
- Journeys of Justice Implementation Workshops (5 workshops involving 50 People)
- Parenting After Separation handbook
- Child Support Video Script, Outcomes and Implementation Guide
- Northern First Nations' Child Support Research Study
- 5 LegalPix Provincial Workshops

- ASL Video, Viewer's Guide
- Child Support Booklet Translation Project (6 languages)

In Progress or Ongoing

- Literature Committee leaflet support (ongoing)
- Diversity Training Proposal for Cultural Sensitization Programming for Court Service Regions (none delivered - ongoing)
- Parenting after Separation Programs: Voluntary, Mandatory and South Asian Programs
- Judicial Community Liaison Programming
- Journeys of Justice PLEI Research Project (Year 3)
- Annual Court Interpreters Conference
- ASL Video for the Deaf Project workshops
- Courtlink School District Programs for Immigrant Youth and Youth at Risk
- Supreme Court Education Committee Training Assessment
- ICBC Autocrime Courtlinks Project
- Legal Pix Civil Law Project
- Chinese PAS program Development and Implementation
- AFCC Conference youth forum, presentation and closing ceremonies
- 20th Anniversary Celebration

Core Administration

- Monthly Statistics Reports
- Monthly Financial reports
- Board Meetings (4 times – plus A.G.M.)
- Northern Native PLEI Committee (bimonthly
- Cultures Advisory Committee (when required)
- Conditions of Employment manual annual updates
- Hiring of Office Assistant
- Development of 98/99 Society Objectives Plans and reports

3) Court Information Program for Immigrants

- 3 part-time workers, covering 6 courthouses, provided 5,349 (4,324) information and referral services to 3,480 (3,149) Vietnamese, Chinese, Hispanic & South Asian clients
- a cost/benefits analysis was developed on power point using transition funding from the Law Foundation. The analysis was used to seek Ministry core funding for this program and as an analytical tool of core program services and a 1999/2000 strategic objectives setting process.

4) Parenting after Separation Program

- the implementation of voluntary PAS programs in Vancouver, Richmond and Port Coquitlam, a mandatory program in Burnaby, a South Asian program for the Lower Mainland. And initial meetings on a Chinese program.

- 101 workshops involving over 1000 participants were organized.
- 31 workshops were cancelled due to low enrolment.

4) International Program: Projects

- Registration as an NGO with NGO project facility
- Development of a South Africa Access to Justice Project
- Initial development of a delegation to Guatemala
- Initial development of a project development process for China

5) Fundraising:

- Consolidation of the technical process for handling individual donor fundraising
- Development of an annual fundraising time-line
-

Investigation of other funding sources including local United Ways, local Bar Associations, PECSF.

Setting the Record Straight

. Unfair criticism and inaccurate reporting can damage the reputations of judges and erode public respect for the courts in the administration of justice.

. Preventative, long-term approaches to the problem are important. For example, judges can facilitate journalists' access to judicial activities and judgments on an ongoing basis. They can work with journalists in court-media committees and other informal settings to improve reporting.

. In the short term, judges occasionally may feel the need to set the record straight; for example, by responding quickly and directly to any unjust personal attack and materially inaccurate media reports.

. Guidance is available on how to proceed. The following common elements have been derived from documents of the American Bar Association, Quebec and Ontario superior courts, and the experience of media relations officers. Courts may wish to use them as guidelines.

Respond when:

. A judge is the subject of unjust personal attack.

. A judgment or ruling is seriously misstated.

. Criticism is materially inaccurate and the inaccuracy is a substantial part of the criticism.

. Criticism displays a lack of understanding of the legal system or the role of the judge and is based at least partially on such misunderstanding.

Do NOT respond when:

. The criticism is fair comment.

. The criticism is vague or the product of innuendo.

. Criticism reflects a personal feud between critic and judge

. The judge concerned has not agreed to the response

. Criticism raises issues of judicial ethics which should go to a disciplinary body, or is the subject of contempt proceedings or would prejudice a matter at issue

. A political campaign is under way

. A lengthy investigation is needed to develop the facts at issue

How to respond

.Courts should set up simple, continuing procedures tailored to their own structures and circumstances that identify individuals and processes to:

. Gather the information required in these situations

. Apply the tests and propose the content and form of response

. Secure approval of those who must be associated with the response and arrange its release.

. Respond within 24 hours or in any event as soon as possible.

. The response team weighs the circumstances in deciding on the form and author of the response. Match the form of the response to the significance of the problem. Any one of the following methods may be used:

. Letter to the editor (used frequently)
. Call to the reporter, editor (also used frequently)
. Letter to newspaper ombudsman or press council (occasionally)
. On-air TV or radio clip (carefully, less frequently)
. News release (sometimes)

These tests can pose difficult judgment calls. You will have more confidence about what to do if the decisions are made by a small group. Consider including a representative from the Bar and the provincial Attorney General's office and whether the response should come from one of these sources as well as or instead of the judiciary.

Annex E

Format
Courts' Communications Strategy

Objectives

- What we want to accomplish in educational, public information and media relations initiatives

Communications Environment

- What we know about public and media attitudes, understanding of our courts and the role of judges.

Strategic Considerations

- The key issues we should address.
- Internal resources available to us: Media officers; court-media committees; judges experienced, trained and willing to engage in public, educational, media activities.
- Individuals and groups we can work with.
- Existing practices and policies. What is missing.

Strategic Approach

- A broad statement on how we will respond to the considerations just discussed.
- Areas of emphasis, key roles

Messages

- A statement of the key themes that will be repeated across all initiatives

Target Groups

- For example, within educational initiatives, targets may be students at particular levels.
- Public initiatives may be aimed particularly at community leaders, groups particularly affected by court decisions etc
- Particular media may be targetted as vehicles to key audiences

Initiatives

- The actions proposed in each of the three areas, and their timetables

Roles and Responsibilities
Monitoring, Review and Reporting